IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION No. 10273 of 1998

Between:

B.Narsinga Rao S/o B.Babaiah
land abutting State Bank of Hyderabad, Pathurgatti Branch, Madina Building, Madina, Hyderabad &
R/o 22-1-265, Aryasamaj, Kalikhabar,Chaderghat, Hyderabad.

..... PETITIONER

AND

1 The Commissioner/Special Officer, Municipal Corporation of Hyderabad, Tankbund Road, Hyderabad.
2 The Station House Officer, Charminar P.S. Charminar, Hyderabad.
3 The Asst. Commissioner of Police(Traffic) Charminar Charminar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue Writ, Order or direction more particularly one in the nature of Writ or Mandamus and declare the action of respondents herein in trying to evict the petitioner from his respective shop (premises admeasuring 20 sqr.feet) butting wall of State Bank of Hyderabad, Pathargatti Branch, Madina Building, Madina, Hyderabad and consequently direct the petitioner from shop premises as without jurisdiction as illegal arbitrary void and unconstitutional violative of Article 21 of the Constitution of India.

Counsel for the Petitioner : Mr.B.S.S.PRASAD

Counsel for Respondent No.1 : Mr.GANTA RAMA RAO
Counsel for Respondent Nos. 2 & 3 : --Govt.Pleader for Home

The Court made the following :

ORDER:

The present writ petition is filed questioning the action of the respondents in trying to evict the petitioner from his shop admeasuring
20 sq.feet, abutting the wall of State Bank of Hyderabad, Pathargatti branch, Madina buildings, Madina, Hyderabad.

The petitioner stated to have been doing cloth business in the subject premises since 1970. The petitioner claims that the subject premises was in possession of his grand father and father who were doing pan business therein prior to 1970. It is alleged that from the month of February, 1998, respondents started interfering with the possession of the petitioner and such other petty venders and were trying to evict them. That questioning the said action, some other similarly situated persons filed a writ petition before this Court and obtained interim direction in W.P.M.P. No. 6348 of 1998 dated 27-2-1998. The petitioner further alleges that on 11-4-1998 respondents visited his shop and without issuing any notice instructed him orally to vacate the subject premises. Hence, the present writ petition.

Heard the learned counsel for petitioner and learned Governed Standing Counsel for first respondent Mr.G.Rama Rao.

Learned standing counsel for first respondent submitted that the petitioner is an encroacher and causing disturbance to the traffic and the first respondent is empowered to remove the encroachments without issuing any prior notice and placed reliance on decision of this Court in MD.MISKINAVELLI Vs. VISAKAPATNAM MUNICIPAL CORPORATION, wherein this Court held as follows;

> “The payment of license fee only gives a license to continue the encroachment till expiry of the period for which the license fee was paid. After expiry of that period, they would be encroachers and cease to be licensee. Since the encroachment fee paid by two petitioners is for the

year 2001-02 only, they cease to be the licensee from 1-4-2002, therefore, the Commissioner has power under section 405 of the Municipal Corporation Act to evict encroachments even without issuing notice. Therefore, the power exercised by the respondent to remove encroachments made by the petitioners, especially when they are stated to be causing obstruction of free flow of traffic and when they are said to have occupied the alternative sites provided to them, cannot be interfered with by this Court by exercise of power under Article 226 of the Constitution of India."

Admittedly, the petitioner is an encroacher and in view of the above decision of this Court, the first respondent Commissioner is empowered under section 405 of Municipal Corporation Act, to remove the encroachments without issuing notice. Hence, I see no reason to interfere with the matter. Accordingly, the writ petition is dismissed. No costs.

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N.V.RAMANA,J

18-3-2005

TVK/DA

To

1 The Commissioner/Special Officer, Municipal Corporation of Hyderabad, Tankbund Road, Hyderabad.
2 The Station House Officer, Charminar P.S. Charminar, Hyderabad.
3 The Asst. Commissioner of Police(Traffic) Charminar Charminar, Hyderabad.

4.. 2 CC to Government Pleader for Home, High Court of A.P. Buildings, Hyderabad (OUT)

5 Two CD copies.